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[Ontario] C "Conferences"

LAND USE CONFERENCE

**DECEMBER 12-13
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Proceedings

LEGISLATION AFFECTING PLANNING

J.A. KENNEDY

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LEGISLATION AFFECTING PLANNING

J. A. Kennedy, Q.C.

This is a happy privilege for me to be able to appear here and study with you some matter that I believe concerns you both in the present and especially in the future.

I will be talking about legislation. Legislation is dry, legislation is dull, but legislation has a bite and that is why we are interested in it. Government traditionally is accepted as a means of doing something in unison that people are less well able to do for themselves individually. Planning of land use seems to me to fit particularly into that definition because if everyone does his own planning then utter confusion will reign, and as the Biblical expression has it, "The last stage of that man would be worse than the first." It would not be planning at all.

Planning basically is one of the functions and indeed, if I may express an opinion, one of the duties of Government. There may be a difference of opinion as to what level of Government should have the final authority. Let us agree at the start that it is a function of Government.

Planning and ecology in all its ramifications are intellectually speaking and logically speaking, a product of the population explosion, and the density of development. In that sense, perhaps land use planning to the farmer is not as well developed as land use planning in the urban centres. Because it has to do with the density of occupancy, it has to do with

municipal services and it has to do with the amenities. Most people seem to think that the amenities were not too bad until man started interfering with them. These pressures are more pronounced and more readily felt in urban centres so that planning of land use in a sense in the agricultural realm, is more a thing of tomorrow than a thing of today. I am sure that any of you who own land, or try to operate a farm in close proximity to a large urban area will say that is not the way I find it.

Planning has been recognized and accepted by Governments in most jurisdictions as a responsibility they owe to the people they serve, and particularly so in the Province of Ontario. In Ontario the planning structure or scheme is in two parts. It is found in two types of instruments, the Official Plan and the Land Use Control or Zoning By-Law.

The Official Plan and the Land Use Control By-Laws as well as the other features of planning are all found in the Planning Act of Ontario. Planning as we know it today in the Province is approximately 50 years old, which makes it a relatively new science and a relatively new body of law. Prior to about 1920, the only planning enforced or imposed was the Residential Street By-Law. Then the planning as we know it today was instituted and began to unfold and the Official Plan was recognized ultimately as one of the basic instruments that would serve the long range purpose.

Originally, Official Plans were thought of as a coloured map on the wall divided into the three hardy perennials of residential, commercial and industrial. As time passed and as experience grew and taught us, it was found that a meaningful plan meant a great deal more. The average Official Plan is found in a booklet anywhere from one to two inches thick. It has some maps but perhaps the most important and the most effective part of the plan is the text itself.

Most municipalities appear in some sectors to be going into disuse. Most municipalities have a Planning Board and the Planning Board as I understand and conceive its purpose, was intended as a cross section of the citizenry to consider the communities needs removed from political considerations of low taxes or high assessments. It was to consider the needs, the wishes, the desires of the citizenry and then give advice to the elected representatives on these subjects. I think it was a sorry day, if I may say so, when the legislation was amended to people Planning Boards with elected representatives. I have always said, "How in the world can an elected representative, sitting on the Planning Board, decide what advice he is going to give himself as a member of the Council." The purpose of the Planning Board is to advise and there is a contradiction in my respectful opinion in having elected representatives on Planning Boards. An Official Plan prepared according to the Planning Act is intended to be prepared by a Planning Board. Their duty is to prepare maps, drawings, texts, statistical

information and all other material necessary for the study, explanation and solutions of problems or matters affecting the development of the planning area. Then ultimately they prepare a plan for the planning area suitable for adoption as the Official Plan thereof and forward it to the Councils of the municipalities affected thereby and recommend such plans to the Council of the designated municipality for adoption.

The Official Plan of sufficient extent and content to serve the desired purpose in my respectful opinion does three main things. It designates the intended use of the various areas and the various parcels of land in the area. It provides for the orderly development of those areas in order that you will not have the urban sprawl or the helter-skelter of all those things which are the direct enemy of proper planning. Thirdly, an Official Plan which is complete in its content and import provides for orderly development of public works.

When I was first appointed Chairman of the Ontario Municipal Board I made a few sortees into various large centres in the United States and in Canada to study just what they were doing in the planning line, and in the city of New York, I was struck by the knowledge and information that the capital budget of the city of New York, was prepared by the Planning Commission. The Planning Commission had the first input as to what capital works would be planned for that city. Obviously, it was ultimately adopted by the Common Council but that brought home to me more forcibly that I think any lesson that I was ever privileged to learn, of how deeply and directly planning is tied to public works and the public services.

The next instruments contemplated by the Planning Act is the Land Use Control By-Law, colloquially called Zoning By-laws. I do not like to call them zoning by-laws because I have heard people start to talk about zoning and when I found out exactly what they were saying, they were not talking about the Land Use Control By-law at all, but they were talking about designated uses in the Official Plan. Zoning has not yet been given an official meaning or a legal meaning in the Province of Ontario, and you will find occasionally that people use the term indiscriminately to refer to all planning rather than to the permitted uses under the by-law under the Land Use Control By-law. An Official Plan does not prohibit the use of land. It merely sets out the long range plan.

It is the By-law passed under the authority of what is now Section 35 of the Planning Act which permits the use of land for certain specified purposes and prohibits the use of land for certain purposes. If I may read the first paragraph it will indicate clearly what I mean. "By-laws may be passed by the Councils of Municipalities for prohibiting the use of land for or except for such purposes as may be set out in the By-law within the municipality or within any defined area or areas or abutting on any defined highway or part of a highway."

You may say "If it is the by-law that controls land use what is the real value, what is the real purpose of an Official Plan?" That is found in Section 19 of the Planning Act which says, "Notwithstanding any other or general or special act,

where an Official Plan is in effect, no public works shall be undertaken and except as provided in subsection 2 and 3, no by-law shall be passed for any purpose that does not conform therewith." So that while an Official Plan does not prohibit use or by itself permit use, once it is in effect, it controls the kind of by-law that can be passed.

You may find this sounds like a contradiction, but to people experienced in the field, it is not really. A by-law may be enforced providing that certain land be used for residential use and in the long range plan, that area is designated for industrial use, but unless and until a by-law is enacted, changing the permitted use of that land, the existing by-law which is at variance with the Official Plan will govern and will permit that particular residential use.

Another function of planning and one about which I understand some of you have heard, is subdivision control. I am not here to defend this legislation. I am just here to try to explain what I understand it to mean. When I talk about Subdivision Control, I have to give you a little of what I consider to be the background or the occasion for that legislation.

One of the things that was found early in this planning saga was that the plan of subdivisions was one of the most effective instruments of all with respect to development of land previously undeveloped. It was also found necessary, desirable, and in the public interest, in the opinion of those who were making our laws, to provide certain requisites, certain

pre-conditions, certain requirements before a plan of subdivision would be put on, as it is colloquially expressed. But people found that these requirements, these conditions were too onerous. Anyone who knew of a surveyor who was adept at his trade would get the surveyor to prepare a plan for them and they would sell off lots and they would not bother about that Department down there, that Mr. Clasky may be telling you about where they decide what you can do, and what you cannot do in the planning of land use.

It was found that there were too many of these. The odd adversion can be tolerated, but if the exception becomes the rule then, of course, it is the duty, I suppose, of Government to do something about it. The fact remains they did something about it. They started introducing the idea of subdivision control which meant that small parcels of land could not be sold off, unless they were described on a plan of subdivision.

Originally that provision was left to the free choice of municipal councils to introduce. As time went on, and some Councils did introduce them and some Councils did not. The problem did not appear to be corrected as quickly and effectively as was desired. Also, by having a size limitation of first ten acres, and then 25 acres, and I am only going to mention checkboard once, by these things people did seem to be getting around the subdivision control.

Finally, it was imposed as applicable throughout the Province and application, no matter what the size of parcel

involved, unless either it was described on a plan of subdivision, or it was the whole of the holding of the person making the sale and giving the conveyance.

Subdivision control today requires that if severances are to be made, which are commonly called severances under the Statute, that they must be permitted in some cases, by a Committee of Adjustment. In cases where there has been established a Land Division Committee for a County, by the Land Division Committee and where there are neither of these, by the Minister. I would expect now it is the Minister of Inter-Governmental Affairs.

There can be an appeal to the Municipal Board by someone who wanted the severance and was denied by the Committee. There is also an appeal to the Municipal Board for anyone who is against the severance and the Committee has granted it and that appeal is an ordinary appeal to the Municipal Board. There is a hearing and evidence is taken. In the case of every decision of the Municipal Board, there is an appeal to the Executive Council, the Cabinet of the Province, and also an appeal on questions of law to the Court of Appeal.

Another feature of land use planning is the redevelopment plan. Redevelopment is defined as the planning or re-planning, design or redesign, resubdivision, clearance, development, reconstruction and rehabilitation or any of them of a redevelopment area and the provision of such residential, commercial, industrial, public, recreational, institutional, religious, charitable or other uses, buildings, works,

improvements or facilities or spaces therefore that may be appropriate or necessary. The reason I read that definition is that if ever you do become concerned with any proposition or project or suggestion of redevelopment, I think that you would be wise if I may say so, not to rely on your own concepts, but to get to the Statute to make sure that it does come within the terms set out.

On the question of redevelopment, a redevelopment area must be designated by the Minister to qualify as a redevelopment area. Land can be acquired by the municipality and in many cases, subject to certain conditions, the senior Governments will contribute to the cost. When the land has been acquired, a redevelopment plan is proposed and that redevelopment plan requires the approval of the Municipal Board. Acquisition of the land requires the approval of the Minister, the redevelopment plan requires the approval of the Municipal Board and the reselling of the land by the municipality requires the approval of the Minister.

I believe, and nobody told me this, but just from examining the situation and the circumstances, it is my view that the reason the Municipal Board was interposed at that stage was because, first of all, many redevelopment plans entail substantial capital expenditures by the municipality and I am sure you all know that this is something that does require the approval of the Municipal Board and secondly, every redevelopment plan does designate new land use for the area being redeveloped and that, of course, as I am sure you all know, comes under the jurisdiction of the Municipal Board for approval.

The land use control by-laws require the approval of the Municipal Board before they come into force. An Official Plan normally requires the approval of the Minister, and the Minister of Treasury, Economics and Inter-Governmental Affairs. He may in a proper case, refer it to the Municipal Board and then the Municipal Board makes the decision instead of the Minister.

Plans of subdivision as the law stands today normally require the approval of the Minister but he may refer these also to the Ontario Municipal Board.

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